

James Greenfields, }
Clerk, } *Appel*

The Lord Provost,
and Magistrates of } *Resp.*
Edinburgh,

The Appellant's C A S E

THE Appellant being Born near *Edinburgh*, and Educated for some Years in that University, and being designed by his Father (an Episcopal Minister) for the Ministry, he was in the Year 1694. duly Ordained a Presbyter by the late Lord Bishop of *Ross*; and there being then no Expectation of any Preferment in his own Country, for any Person of his Perswasion, he went into *Ireland*, where his Orders were allowed, and he admitted, first by the late Bishop of *Down*, to a Curacy within his Diocess; and afterwards by the late Lord Primate of all *Ireland*, to the Curacy of the Church of *Tynan*, in the Diocess of *Armagh*, which he served for Twelve Years, Faithfully, Diligently, and with a clear Reputation, as appears by the Certificate of the present Archbishop of *Armagh*, under his Archiepiscopal Seal, and of his *Vicar-General*, his *Arch-Deacon*, and other Clergy of that Diocess.

In the Year 1709. the Appellant returned to his Native Country, about his Private Affairs; where, soon after his Arrival, he received an Account that the Rector of *Tynan*, whose Cure he had served in *Ireland*, was Dead, and his Living conferred on another Person, who would serve the Cure himself, whereby the Appellant became destitute of a present Livelihood for Himself, a Wife, and Seven Children; but being Desired and Encouraged by some *English* Gentlemen, who then attended Her Majesty's Service at *Edinburgh*, and others of the Communion of the Church of *England*, he Exercised his Ministerial Function in a Private House at *Edinburgh*, by Reading the Liturgy of the Church of *England*, and Preaching to them, as he conceived, was Lawful for him to do, there being no Law of that Part of the Kingdom call'd *Scotland*, to restrain him from it; and it was very well known, that he had, in *Ireland*, duly qualified himself, by taking the Abjuration, and other Oaths, to the Government, and always pray'd for the QUEEN's Majesty, and the Princess *Sophia*; all which, and his Testimonials, he notified to the Lord Provost, and Sir David Dalrymple, Lord Advocate, and desired their Protection.

The Presbytery of *Edinburgh*, nevertheless, called the Appellant before them, for presuming to Exercise his Function in their Bounds, without their Allowance: He appeared before them, and produced his Orders, Certificates, and Testimonials, of his good Affection to her Majesty's Person and Government; and insisted, that he, being a Minister of the Church of *England*, and not having intruded into the Church, or Gleab, of any Minister Established by Law; and there being no Law, which prohibited or restrained the Exercise of the Worship of the Church of *England* in *Scotland*, in a private manner, he was not subject to their Authority or Censure; but the Presbytery, nevertheless, Prohibited and Discharged the Appellant from Exercising the Ministry there, grounding their Prohibition upon his *Exercising the Ministry within their Bounds, and without their Allowance, and Introducing a Form of Worship contrary to the Purity and Uniformity of the Worship of the Church established there by Law*; and Recommended it to the Magistrates of *Edinburgh*, to render their Prohibition more Effectual.

Whereupon the said Magistrates Summoned the Appellant before them, requiring his Obedience to the said Sentence, with *Threats of Imprisonment in case of Noncompliance*: But the Appellant believing it to be his Duty, and consistent with the Laws of that Kingdom, to Exercise his said Function in the manner as he had done, continued the Exercise of his Ministry as before, for which the said Magistrates, 15 September, 1709. committed him Prisoner to the Common Goal, there to remain until he should give Security to desist from the Exercise of the Ministry within their Bounds, or to remove himself from thence.

In November following, the Appellant preferred a Bill of Suspension of the said Sentence of Imprisonment to the Lords of the Council and Session, to which the Magistrates put in their Answer, and insisted upon a Matter not contained in, but foreign to the said Sentence, viz. That the Appellant having received Ordination from the Bishop of *Ross* after the Abolition of Episcopacy in *Scotland*, and the said Bishop's being Exauktorated, the Appellant was not a Minister duly Qualified, and therefore the Lords of the Session refused to deliver him from the Prison, where he lay under Confinement above seven Months.

Which Sentence and Decree, as the Appellant humbly conceives, and is advised, are Illegal and Unjust.

I. Because though Presbytery is the Legal Established Church Government in *Scotland*; yet there is no Law there, of Conformity, which obliges the Laity to be of their Communion, nor any Law which prohibits the Ministers of the Communion of the Church of *England* to Exercise their Function, or the Laity to join in Worship with them in a private manner, or which gives the Magistracy any Jurisdiction to inflict Penalties on such Ministers or Laity: And those Acts of Parliament whereon the said Sentences are pretended to be founded (and particularly the Act 22^d against Intrusion into Churches, made in the Year 1695.) were never intended against Persons in the Appellant's Circumstances; for that Act is made only against those that Intrude into vacant Churches without a Legal Call and Admission. And the Appellant never intruded into any Church or Benefice, or deprived any Person of his Right, but Exercised his Function only in a private House to those of the same Communion with himself, neither is Imprisonment warranted by any of the said Acts.

II. Because the Lords of Council and Session ought only to have Affirmed or Reversed the said Sentence, for the Reason on which it was founded, and not proceed to Judgment upon any new Reason.

III. Because if those Lords might Found their Decree upon a new Reason, not contained in the Magistrates Sentence, yet their Decree, as to such new Reason, is contrary to the Principles and Practice, not only of the Christian Church in general, but of the present Church of *Scotland*, which admits Presbyters ordained by Exauktorated Presbyters, and also Presbyters in the same Circumstances with the Appellant, who though they were ordained since the Abolition of Episcopacy by Exauktorated Bishops, yet their Ordination has been allowed of, and they admitted to the Cure of Souls, as rightly Ordained.

For which Reasons, and forasmuch as there is now no Superiour Court of Justice in North-Britain, whereto he could (in this Case) have any Recourse, the Appellant humbly hopes that Your Lordships will Reverse the said Decree, and give him such Relief, as to Your Lordships shall seem most meet.

THO. LUTWYCHE,
HUM. HENCHMAN.